

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**ROBERT THOMAS MAXWELL/G-DOFFEE
ADC #108778**

PLAINTIFF

v.

No. 5:13-cv-291-DPM

**RICHARD CLARK, Sgt., ADC Maximum
Security Unit, and RODERICK L. COOKSEY, JR.,
Corporal, ADC Maximum Security Unit**

DEFENDANTS

ORDER

1. G-Doffee's motion for a new trial, *No 175*, and embedded request to strike Defendants' response, *No 181 at 2-3*, are denied. No meritorious ground for another trial has been presented. His motion for a copy of this order, *No 182*, is granted. The Clerk will send it to him.

2. G-Doffee claims that, near the end of the trial, a juror tried to communicate with Defendant Clark. *No 175 at 3*. The Court observed the jury closely throughout the proceedings and didn't see this alleged misconduct. Most importantly, G-Doffee didn't bring the alleged attempt at communication to the Court's attention when it happened, or promptly thereafter. He could have and should have. G-Doffee was deeply involved in his case. He communicated regularly and extensively with his appointed lawyer throughout the proceedings. Yet neither G-Doffee nor counsel raised

this alleged impropriety during trial. Holding back on this issue has deprived the Court of the opportunity to investigate and, if need be, to cure. G-Doffee therefore waived his objection. *Yannacopoulos v. General Dynamics Corporation*, 75 F.3d 1298, 1304 (8th Cir. 1996).

3. G-Doffee's other proposed grounds for a new trial – most waived at trial—lack merit. First, there was no discovery violation, *No 175 at 6–7*, because Clark and Cooksey weren't required to disclose evidence used solely for impeachment. FED. R. CIV. P. 26(a)(1) & (3). Second, after lengthy proceedings outside the jury's presence, G-Doffee chose to follow his lawyer's advice about the Tracy Bryant letters. *No 175 at 5–6*. He can't walk back that decision now. Third, though both sides were zealous, nothing in the closing arguments was so prejudicial as to warrant a new trial. Fourth, though G-Doffee disagrees with the jury's verdicts, those verdicts aren't against the weight of the evidence. *Gray v. Bicknell*, 86 F.3d 1472, 1480 (8th Cir. 1996). And fifth, on his preserved claims of error, G-Doffee hasn't offered any reason for this Court to change the rulings it made before and during trial.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

14 December 2016